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NASA Procedural Requirements

NPR 2190.1B
Effective Date: December 27, 2011
Expiration Date: December 27, 2016

COMPLIANCE IS MANDATORY

Printable Format (PDF)

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Subject: NASA Export Control Program

Responsible Office: Export Control & Interagency Liaison Division

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Chapter 4. Export Administration Regulations (EAR) Procedures

4.1 General

4.1.1 In general, all dual-use items in the U.S. or moving in transit through the U.S. are subject to the EAR. An exception to this is those items that are exclusively controlled by other departments or agencies of the U.S. Government (such as the DoS for items subject to the ITAR) and such technology or software that are in the public domain. For more information and greater detail about the scope of these regulations, refer to the EAR.

4.1.2 Once it is determined that the item or activity is subject to the EAR, it must be classified according to the CCL, Supplement No.1, Part 774 of the EAR. The general characteristics of the item will determine its appropriate category. When the item has been classified into one of the categories, its particular characteristics and functions can be matched to a specific ECCN. The CCL contains 10 categories, 0 thru 9; each category is subdivided into five groups designated by letters A through E. The ECCN consists of a set of digits and a letter, as follows:

a. Each ECCN entry identifies the type of, and reason for, control associated with the item and under what conditions a License Exception may be granted. The first digit identifies the general category; the letter immediately following identifies under which of the five groups the item is listed. The second digit differentiates individual entries by identifying the type of controls associated with the items contained in the entry. The second or third digit serves to differentiate between multilateral and unilateral export controls. For example, in ECCN 9A004, the "9" represents "Propulsion Systems, Space Vehicles, and Related Equipment." The "A" represents "Systems, Equipment, and Components," and the "00" represents the reason for control as "National Security." The last digit, "4," represents the sequential location in the category.

b. If a commodity or technology under the jurisdiction of the EAR is not described under an ECCN on the CCL, it is designated "EAR-99," which describes items subject to the EAR, but not specifically listed on the CCL. Generally, EAR-99 items are controlled at the lowest level and could be exported without an IVL or specific License Exception to any destination except embargoed countries or countries designated by the Secretary of State as sponsors of terrorism.

c. If an item or technology is subject to the scope of the EAR, the "Ten General Prohibitions" listed in the EAR shall be considered to ensure that none of those prohibitions applies (e.g., exporting to prohibited end users on the List of Entities of Proliferation Concern in Supplement 4 to Part 744 of the EAR.)

4.1.3 Procedures for determining EAR license or License Exception eligibility are delineated in the following decision tree (Refer to Appendix C of this NPR):

a. Having consulted the CCL and classified the item to be exported under an ECCN, this decision tree will lead to a determination as to whether a license is required to export or reexport the item to specific destination. If applicable, check to see whether a valid export license currently exists for the proposed export, against which the export may be properly effected. 15 CFR § 738.4 gives more detailed guidance, as well as the Country Chart. Note: Publicly available technical data and software are generally exportable to all destinations.

b. Under the entry heading "License Requirements" on the CCL, in each ECCN Description, reasons for control are identified. Also in each ECCN, certain CCL-based License Exceptions may be listed for that entry.

c. With each Reason for Control, there is an applicable Country Chart identifier noted. It is now necessary to consult the Country Chart, locate the country of destination, and determine whether an "X" is marked in the cell under any of the associated Reasons for Control. If no "X" appears in the relevant column for the destination country, then No License is Required (NLR), and the export may be effected by simply marking "NLR" on the AES/SED, once all appropriate screens (See Section 4.3 of this NPR) and red flags (See Section 3.3 of this NPR) above have been reviewed.

d. If an "X" appears in the relevant column for the country of destination, a license is required unless a License Exception applies (see License Exceptions, below). The appropriate application form for exports and transfers is BIS Form 748P. In some cases, if the export is not covered by an international agreement or contract with nontransfer/nondisclosure provisions, a Statement by the Ultimate Consignee, BIS Form 711, may be required, as enumerated in the EAR.

e. Refer all license requirements to the HEA through your CEA with other relevant license application information.

4.2 License Exceptions

4.2.1 A "License Exception" is an authorization that allows the export or reexport, under stated conditions, without an IVL. The EAR describes License Exceptions and provides detailed instructions for Exceptions and their restrictions. There are currently 17 EAR License Exceptions, 11 of which are discussed in Section 4.2.4, as they are the License Exceptions most commonly used by NASA.

> *Note: License Exceptions may not be used when the export is prohibited by a Denial Order; when the export would support proliferation activities; when the export would violate terms and conditions of an IVL or License Exception; or when the exporter has knowledge that a violation of law will occur in the export. Additionally, consistent with the policies and provisions of Export Administration Act, no License Exceptions may be used to export items controlled for Missile Technology (MT) reasons on the CCL.*

4.2.2 Because most EAR License Exceptions require a written assurance by the recipient (e.g., BIS Form 711, Statement by Ultimate Consignee), an international agreement or contract is normally required for use of any License Exception.

4.2.3 Although License Exceptions permit the export of items without an IVL, there are requirements for filing AES/SEDs. Record the correct License Exception symbol and the correct ECCN (e.g., 4A003, 5A002) on the AES/SED entry for all shipments of items exported under a License Exception. Use of a License Exception requires approval of the CEA or HEA.

4.2.4 The following list represents the recommended sequence for reviewing some of the EAR License Exceptions most commonly used by NASA to determine whether an Exception may be used to effect an export. As soon as the exporter identifies an Exception that applies to her or his export, and for which all of the conditions of the Exception are met and no General Prohibitions apply, there is no need to attempt to find another applicable Exception. When considering a License Exception, you must read the entire description in the EAR. The list proceeds from least restrictive to most restrictive:

a. NLR: No License Required; applicable to commodities, software, and technology (See paragraph 4.2.3.).

b. GOV: Exports consigned to and for the official use of the U.S. Government or any agency of a cooperating government; applicable to commodities, software, and technology.

c. GBS: Exports of commodities controlled for National Security only to Country Group "B" (Free World"); requires "GBS-Yes" under ECCN on CCL

d. RPL: One-for-one replacement parts for previously exported equipment; applicable to commodities and software only.

e. LVS: Shipments of limited value. Single shipment exports of eligible commodities as identified by "LVS - $(value limit)" on the CCL to destinations in Country Group B, provided the net value of the items included in the same order and controlled under the same ECCN entry on the CCL does not exceed the amount specified for LVS in that entry.

f. CIV: Civil end users. Exports of commodities, software, and technology controlled for national security reasons only and identified by "CIV - Yes" on the CCL to former Communist Bloc countries, provided the items are destined to civil end users for civil end uses.

g. APP: Exports of certain computers and "electronic assemblies" and specially designed components for consumption in Computer Tier countries.

h. TSU: Exports of operation technology and software, software updates ("bug fixes"), mass market software, and

publicly available encryption source code. Operation technology is the minimum technology necessary for the installation, operation, maintenance, and repair of items lawfully exported. If the operation technology takes the form of software code, it must be object code, not source code.

i. TSR: Exports of technology and software controlled for national security reasons only and identified by TSR - Yes in entries on the CCL; provided, the software or technology is destined to Country Group B ("Free World").

j. TMP: Temporary exports of commodities and software that are tools of trade; kits and replacement parts; exhibitions; inspections and calibrations; or Beta-test software. The commodities and software must be exported for less than one year and must remain under the effective control of the exporter.

k. ENC: Exports and reexports of encryption items, controlled under specific ECCNs, to specific countries. There are review and reporting requirements that apply to certain exports using ENC.

4.3 Screens

4.3.1 Foreign partners and end users of NASA exports shall be screened for nuclear proliferation concerns, missile proliferation concerns, and chemical-biological proliferation concerns. Refer to the EAR for missile and nuclear screens and for destinations of chemical-biological weapons proliferation concern.

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